

§ 58-22-20. Risk retention groups not chartered in this State.

Risk retention groups that have been chartered in states other than this State and that seek to do business as risk retention groups in this state must observe and abide by the laws of this State as follows:

- (1) Notice of Operations and Designation of Commissioner as Agent. – Before offering insurance in this State, a risk retention group shall submit to the Commissioner:
 - a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information including information on its membership, as the Commissioner may require to verify that the risk retention group is qualified under G.S. 58-22-10(10);
 - b. A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance that (i) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and (ii) was offered before that date by any risk retention group that had been chartered and operating for not less than three years before that date;
 - c. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by G.S. 58-22-15(b) at the same time that such revision is submitted to the Commissioner of its chartering state; and
 - d. A statement of registration that designates the Commissioner as its agent for the purpose of receiving service of legal process.
- (2) Financial Condition. – A risk retention group doing business in this State shall file with the Commissioner:
 - a. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist, under criteria established by the NAIC or by the Commissioner;
 - b. A copy of each examination of the risk retention group as certified by the State insurance regulator or public official conducting the examination;
 - c. Upon request by the Commissioner, a copy of any audit performed with respect to the risk retention group; and
 - d. Such information as may be required to verify its continuing qualification as a risk retention group under G.S. 58-22-10(10).
- (3) Taxation.
 - a. All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same payment procedures and to the same interest, fines, and penalties for nonpayment as those applicable to surplus lines insurance under Article 21 of this Chapter. Premiums paid by

- purchasing groups are, however, taxed as provided in G.S. 58-22-35(b).
- b. To the extent licensed agents or brokers are utilized pursuant to G.S. 58-22-60, they shall report and pay the taxes for the premiums for risks that they have placed with or on behalf of a risk retention group not chartered in this State. Such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the Commissioner, as provided in G.S. 58-2-185. These records shall, for each policy and each kind of insurance provided thereunder, include the following:
 - 1. The limit of liability;
 - 2. The time period covered;
 - 3. The effective date;
 - 4. The name of the risk retention group that issued the policy;
 - 5. The gross premium charged; and
 - 6. The amount of return premiums, if any.
 - c. To the extent that insurance agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State. Each risk retention group shall report to the Commissioner all premiums paid to it for risks insured within the State.
- (4) Compliance With Unfair Claims Settlement Practices Law. – A risk retention group and its agents and representatives shall comply with G.S. 58-3-100(a)(5) and G.S. 58-63-15(11).
 - (5) Deceptive, False, or Fraudulent Practices. – A risk retention group shall comply with the provisions of Article 63 of this Chapter and Chapter 75 of the General Statutes regarding deceptive, false, or fraudulent acts or practices.
 - (6) Examination Regarding Financial Condition. – A risk retention group must submit to an examination by the Commissioner to determine its financial condition if the insurance regulator of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the Commissioner. This examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the Examiner Handbook of the NAIC.
 - (7) Notice to Purchasers. – Any policy issued by a risk retention group shall contain in 10 point type and contrasting color on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group is not subject to all of the insurance laws and regulations of your state. In the event of the insolvency of your risk retention group, losses under this policy will not be paid by any insurance insolvency or guaranty fund in this State."

- (8) Prohibited Acts Regarding Solicitation or Sale. – The following acts by a risk retention group are prohibited:
 - a. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and
 - b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.
- (9) Prohibition of Ownership By An Insurance Company. – No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.
- (10) Prohibited Coverage. – No risk retention group may offer insurance policy coverage prohibited or not authorized by this Chapter or declared unlawful by the appellate courts of this State.
- (11) Delinquency Proceedings. – A risk retention group not chartered in this State and doing business in this State must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under G.S. 58-22-20(6).
- (12) Penalties. – A risk retention group that violates any provision of this Article is subject to G.S. 58-2-70. (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1; c. 727, ss. 1, 2; 1993, c. 452, s. 37; 1995 (Reg. Sess., 1996), c. 747, s. 9; 2004-199, s. 20(d).)